UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, Indiana

EAGLE SERVICES CORP. and
EAGLE CONTAINER SERVICES CORP.,[1]
A Single Employer

and Case 25-RC-10028

TEAMSTERS LOCAL UNION NO. 142,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO,
Petitioner

DECISION AND ORDER CLARIFYING UNIT

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Based upon the entire record in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved herein seeks to represent certain employees of the Employer.

3. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1), and Section 2(6) and (7) of the Act, for the following reasons:

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[1] The name of Eagle Services Corp. has been amended to reflect its correct legal name, and the name of the Employer has been amended to reflect the finding herein that both corporations constitute a single Employer.

STATEMENT OF FACTS

The Employer, Eagle Services Corp., was established in 1994 and provides a variety of industrial cleaning services for such businesses as steel mills, public utilities, food and grain mills, refinery and petrochemical plants and general contractors. Included among the services Eagle Services provides are high pressure water cleaning, building and machinery cleaning, tank and vessel cleaning, sewer cleaning, chemical cleaning, and food process cleaning and sanitizing. The Employer operates two facilities, one in Illinois and the other in northern Indiana at Burns Harbor, the facility involved in the instant proceeding. Employed at the Burns Harbor facility are between 25 and 50[2] servicepersons and mechanics who are covered by a collective bargaining agreement between the Employer and the Laborers' International Union, including its Local Union No. 81. The parties' current contract is effective by its terms from January 1, 1999 through December 31, 2001.

On June 1, 2000, the principals of Eagle Services formed a new corporation named Eagle Container Services Corp. which is a wholly-owned subsidiary of Eagle Services. According to Services' Vice President of Operations, who is also the chief operating officer of Eagle Container, Eagle Container was the product of a decision to expand services in the area of dumpster rentals. Prior to the creation of Container, Services owned only 8 vacuum containers which it used in its cleaning work, to suck liquid waste from a customer's site into the container for subsequent disposal by Services' employees. Services relied upon other trash receptacle suppliers such as Waste Management, to provide it with dumpsters and other receptacles in which to deposit debris Services' employees removed from customer sites. The record also reflects that upon occasion Services leased dumpsters to customers. But for the most part, dumpsters were used by Services' own employees in connection with their cleaning work.

As mentioned above, in the spring of 2000 a decision was made to enter the dumpster-rental business. During the summer of 2000, Services purchased 100 large trash containers and several trucks, including "roll-off" trucks which are used to deliver and pick up containers from customer sites. The containers roll off the back of the trucks onto the ground, and when the containers are filled with debris, Container drivers roll the containers back onto their trucks and transport the containers to landfills or other appropriate locations where the waste is deposited. According to Services' Vice President, the newly created Container corporation owns virtually no assets and has no employees. The trucks and dumpsters it utilizes were purchased by Services and its staff are on Services' payroll. Between September and November of 2000, Services hired 2 employees and transferred a third employee from Services to Container to perform truck driving and container delivery/pick-up functions. The drivers are paid at an hourly rate Services deemed appropriate pursuant to the terms of its contract with the Laborers' Union, consistent with the type of license each driver possesses and/or training he has completed. Since commencing its Container business, Service has applied all other terms of its contract with the Laborers' Union, including its fringe benefit provisions, to the three Container drivers.

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[2] According to the Employer's Vice President of Operations, approximately 25 employees are "on call" and do not necessarily work a 40-hour workweek, but as needed.

Although all individuals are employed and paid by Services, six individuals perform work primarily for Container: the 3 drivers already discussed, a dispatcher who issues them their daily work assignments, a sales representative, and Services' Vice President of Operations who is ultimately responsible for all Container operations.

Services recently built a new facility in Burns Harbor, and the offices and personnel of both Services and Container report to and are located at this facility. The former facility and its yard, which are located three to four blocks away, have been used since approximately January of 2001 by the Container drivers to stage and store containers and to thaw the frozen contents of some containers in a heated bay, before disposition of the containers' contents.

In the instant petition the Petitioner, Teamsters Local Union No. 142, seeks an election in a unit comprised of the 3 drivers who perform receptacle pick-up and delivery services for Container. The Employer contends, however, that its current contract with the Laborers' Union constitutes a bar to such an election; and in the alternative, the Employer contends that the group of 3 drivers fails to constitute a unit appropriate for purposes of collective bargaining. Although it appears, based upon the record, that representatives of the Laborers Union were aware of the present hearing, no representative of the Laborers' Union participated in the proceeding.

Although the contract refers to all Service employees as "Servicemen," Services maintains a fleet of approximately 50 trucks [3] and its employees routinely perform truck driving functions in conjunction with their cleaning work. Some of the trucks are also very similar to the "roll-off" trucks driven by the Container drivers.[4] In addition, Services' Vice President identified nine Services' employees who have driven or who also currently drive container trucks. Services' employees pick up and deliver trash receptacles when substituting for absent Container drivers. In addition, Services has rented an additional truck and a Services' employee is currently transporting trash receptacles, too. Although the Container dispatcher primarily issues dispatches to the Container drivers, the record indicates that upon occasion Services' dispatchers also dispatch Container drivers.

ANALYSIS

In view of the fact that Eagle Services and Eagle Container are affiliated business enterprises with the same officers and principals, who have formulated and administered a common labor policy for both corporations, and have shared common premises and facilities; and in view of the fact that Eagle Services provides administrative and other services for Eagle Container and provides personnel to Container, it is concluded that Eagle Services Corp. and Eagle Services Container Corp. are a single employer for purposes of the National Labor

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[3] Although the record is unclear, this appears to be a combined fleet of trucks used at both facilities.

[4] For example, the chassis of the vacuum trucks driven by Service employees are in some cases identical to the chassis of the Container trucks driven by the disputed employees.

Relations Act, South Prairie Construction Company v. Operating Engineers Local 627, 425 U. S. 800 (1976); Thorntown Heating Service, Inc., 294 NLRB 304 (1989).

It is clear that when the parties negotiated their present contract there was no intent to apply the contract to persons whose primary, if not exclusive function, is the transportation of waste receptacles to and from customer sites. Indeed, there is no evidence that the Employer had even contemplated expanding its business into the receptacle rental arena when the contract was negotiated. Thus, it cannot be said that by their execution of the contract the parties intended it to apply to employees like the three Container drivers.

The chronology of events in this case and the post-contract creation of the Container enterprise brings the case squarely within the Board's accretion principles. When new jobs come into existence which were unforeseen at the time parties negotiated a contract, or where jobs have changed substantially since the execution of a contract, the Board applies the principles of accretion to determine whether these newly created or recently changed jobs should be included within the existing bargaining unit, or whether employees occupying these jobs possess such a clearly defined separate identity so that they lack a community of interest with existing unit members, and should properly belong in a unit of their own.

An accretion is commonly defined as the addition of a relatively small group of employees to an existing unit, where the additional employees share a community of interest with unit members and lack a separate identity of their own, Safeway Stores, 276 NLRB 944 948 (1985) In assessing accretion issues, the Board has historically considered various factors, including the extent of employee interchange, the presence or absence of common supervision, centralized control of labor relations, the centralization of administrative control, the degree of operational integration, the geographic proximity of work sites, the similarity of employee skills, functions and working conditions, collective-bargaining history, and the number of employees to be potentially accreted in comparison to the size of the existing unit. In any given case, a number of factors may favor and disfavor a finding of accretion, and the Board must balance the right of employees to select a bargaining agent against the concomitant statutory objective of maintaining stable labor relations.

In John P. Scripps Newspaper Corp., d/b/a the Sun, 329 NLRB No. 74 (September 30, 1999) the Board recently established a new presumption to be used in accretion cases where bargaining units are defined by the work performed by unit members (as is the case at hand), rather than by job classifications or titles. Specifically, the Board stated:

> If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above-standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate, *Id* , Slip Op at 6 (emphasis added).

In the present case, Article II of the parties' contract provides that the Employer recognizes the Laborers' International Union of North America and applicable District Council as the exclusive bargaining representative of "all Employees performing work covered by this agreement..." Article III in turn describes the work covered by the agreement:

> Section 1. The work coming under the jurisdiction of the Union and by the terms of this agreement includes all work to be performed by Employees of the Employer at the work site (and) [sic] shall cover and apply to industrial and environmental service cleaning work and all work incidental thereto (emphasis added).

The Petitioner asserts that this language restricts the coverage of the contract only to truck driving which is incidental to cleaning work. Thus, it contends that the transportation of dumpsters to and from sites on which other employees of Services are performing cleaning work is arguably covered by the contract, while the transportation of dumpsters to sites on which no work is being performed by Services' employees, is not within the coverage of the contract. The evidence indicates that Services' employees have done both types of transporting. Historically, Services' employees have transported waste receptacles both to sites on which Services' employees were performing work, and to customer sites on which no Services' employee was performing work. For example, Employer invoices show that in 1999 it billed customers approximately $40,000 for "roll off box rental" and "vacuum box" rentals in addition to the provision of other services. Thus, the evidence indicates that at the time the parties negotiated their present contract, employees of Services were performing functions similar to those currently performed by the Container drivers. The difference is one of quantity rather than kind. The Container drivers perform almost exclusively transportation work, while Services' drivers perform both transportation and cleaning functions, although predominantly cleaning work. Thus, applying the Sun analytical framework, one must conclude that the three Container drivers "perform job functions similar to those performed by unit employees," and should be included within the same unit absent evidence showing that the interests of Container drivers are so dissimilar from those of unit members that their inclusion within the same unit would be inappropriate.

Here, the evidence fails to establish such a dissimilarity of interests between the two groups of employees to support a finding that the Container drivers possess a distinct and separate identity. Applying the traditional accretion factors to the case at hand, one must conclude that the preponderance of factors favor the Container drivers' accretion to the existing unit. Although Container drivers technically perform services for a different legal entity than Service drivers, Container appears to be a shell corporation and Services' Vice President described Container Services as merely as "a marketing tool." Container Services is wholly owned by Eagle Services and all individuals who perform work for Container are employees of Services. The Employer has treated the Container drivers as members of the existing bargaining unit, and applied the contract's provisions to them, including wage rates and economic benefits.

Although the two groups of employees have different direct supervision, there is some interchange of supervision when dispatchers of one company substitute for the dispatcher of the other company. Interchange among employees occurs regularly since Services' drivers substitute for Container drivers in their absence. Contact between employees of each corporation occurs daily since both groups of employees report to and pick up their work assignments from the same office. Container and Services' drivers can also communicate with each other throughout the day while away from the Employer's facility via radios. The skills possessed by Container and Services' drivers are similar since they drive similar trucks and many possess the same type of Commercial Drivers License and/or training in the removal of hazardous waste. The number of employees to be potentially accreted (3) to a unit of 25 to 50 employees, also favors accretion. Thus, such factors as the similarity of employee job skills and work functions, the similarity in their terms and conditions of employment, the Employer's historical treatment of Container drivers as unit members, the centralized control of labor relations, the degree of operational integration of Container's work with that of Services', the degree of employee interchange and employee contact between the two groups, and the number of employees to be accreted in comparison to the size of the existing unit, all strongly favor a finding of accretion and fail to rebut the Sun presumption. Accordingly, it is concluded that the Container drivers do not constitute a clearly identifiable homogeneous group with a community of interest apart from members of the bargaining unit of Eagle Services, and therefore, the Container drivers shall be added to the existing bargaining unit. Accordingly, the petition herein is dismissed.

ORDER CLARIFYING UNIT

The bargaining unit described in the collective-bargaining agreement entitled "Laborers' International Union of North America Industrial-Environmental Cleaning Services Specialty District Council Agreement with Eagle Services Corp.," whose terms are effective from January 1, 1999 through December 31, 2001, shall be clarified to include employees who perform truck driving and related services for Eagle Container Services Corp.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 10, 2001.

DATED at Indianapolis, Indiana this 26th day of April, 2001.

/S/ Roberto G. Chavarry
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